



DEPARTMENT OF JUSTICE
Antitrust Division

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Mr. David H. Johnson
104 Inverness Center Place
Suite 110
Birmingham, Alabama 35242

Dear Mr. Johnson:

This letter responds to your request on behalf of the Birmingham Cooperative Clinical Benchmarking Demonstration Project ("the Demonstration Project") for a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions concerning the Demonstration Project's proposal to collect and report data concerning the relative performance and cost of services outcomes and costs with national "benchmarks" and averages.

We understand that the participants in the Demonstration Project are 24 Birmingham-area businesses and 10 Birmingham-area hospitals. The purpose of the Demonstration Project is to develop data that can evaluate the appropriateness, cost, and clinical effectiveness of the provider participants' services. Initially, the participating providers will report data concerning clinical effectiveness and historical costs in providing services under the Diagnosis Related Groups of acute myocardial infarction (DRG Nos. 121-23), obstetrical delivery (DRG Nos. 370-75), and pneumonia (DRG 89). This data will be collected and analyzed by MediQual Systems, Inc., an independent company specializing in analyzing and reporting standardized data for hospitals that hospitals can use to improve their quality and efficiency.

In addition to historical costs, the data collected by MediQual will include patient outcomes, length of stay, and the patient mix for each participating hospital. This information is included so that MediQual will be able to standardize the data to make more apt comparisons. The Demonstration Project is seeking clearance for MediQual reports that will compare each participating hospital's aggregated averaged results in each of the three DRG groups with national averages and national "benchmark" averages developed from MediQual's data base, and with Birmingham aggregated averages for all participating hospitals. Each participating hospital will have the opportunity to meet with and explain its results to the participating businesses who are required to attend.

The participating businesses will be assessed a \$2-per-employee fee to pay for the administrative costs of the Demonstration Project. Each participating hospital will contract with

MediQual and will bear its costs for MediQual's services. The information in all reports by MediQual will be based on data more than three months old.

Based on the information you have provided, the Department has no present intention of challenging the Association's activities on antitrust grounds. In making this demonstration, we have noted that purchasers of hospital services initiated the Demonstration Project and the Project is the result of collaboration between these purchasers and providers of hospital services in the Birmingham area. This collaboration has the potential of allowing businesses to make better informed purchasing decisions and should also promote hospital effectiveness and efficiency. To the extent that this occurs, the Demonstration Project could be procompetitive and could result in lower health care costs. Moreover, the charges information reported to MediQual by the hospitals is not the actual charges paid by purchasers in virtually all transactions. In accord with our normal practices, however, the Department subsequently concludes is required by the public interest if the actual operation of the Demonstration Project proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accord with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General